SENATE RECORD VOTE ANALYSIS

106th Congress — July 13, 1999, 7:41 p.m.
1st Session — **Vote No. 201** — Page S-8360 Temp. Record

HEALTH INSURANCE REFORM/Emergency Medical Care Mandate

SUBJECT: **Patients' Bill of Rights Act . . . S. 1344. Graham amendment No. 1235 to the Daschle (for Kennedy) amendment No. 1233 to the Daschle substitute amendment No. 1232.**

ACTION: AMENDMENT REJECTED, 47-53

SYNOPSIS: As introduced, S. 1344, the Patients' Bill of Rights Act, contains the text of S. 6, a health insurance regulation bill proposed by Senator Kennedy and other Democrats. The bill: will regulate the structure and operation of all health insurance products at the Federal level; will impose extensive mandates on consumers, health insurers, and employers; and will create new rights to sue employers and insurers for unlimited compensatory and punitive damages. As estimated by the Congressional Budget Office (CBO), this Democratic plan will cause insurance premiums to rise by an average of 6.1 percent (which will be in addition to any increases from inflation or other causes). The 6.1-percent cost increase, which will total $72 billion over 5 years, will cause approximately 1.8 million Americans to lose their health insurance coverage.

The Daschle substitute amendment would enact some of the provisions of the Patients' Bill of Rights Plus Act (S. 300) as proposed by Republican Members. (Senator Daschle offered the amendment so that Democrats could propose amendments to it). The Republican bill: would enact consumer protections standards for federally regulated health insurance plans; would require all private group health plans to provide a wide range of comparative information about health insurance coverage; would require all private group health plans to have written grievance procedures, internal appeals processes, and independent external appeals processes; would prohibit all private group and individual health plans from denying coverage, adjusting premiums, or adjusting rates based on genetic history or testing; would give self-employed individuals a full tax deduction for their health insurance costs immediately (currently a full deduction is being phased in; the Daschle amendment dropped this reform); and would give every American the option of starting medical savings accounts (MSAs; the Daschle amendment dropped this reform as well). The CBO estimates that the Republican plan would raise premiums an average of .8 percent. However, its net effect would be to increase the total number of insured Americans because it also would give them access to MSAs and would make insurance more affordable for self-employed Americans.

(See other side)

YEAS (47)

Republicans (2 or 4%)	Democrats (45 or 100%)	
Chafee	Akaka	Kennedy
Specter	Baucus	Kerrey
	Bayh	Kerry
	Biden	Kohl
	Bingaman	Landrieu
	Boxer	Lautenberg
	Breaux	Leahy
	Bryan	Levin
	Byrd	Lieberman
	Cleland	Lincoln
	Conrad	Mikulski
	Daschle	Moynihan
	Dodd	Murray
	Dorgan	Reed
	Durbin	Reid
	Edwards	Robb
	Feingold	Rockefeller
	Feinstein	Sarbanes
	Graham	Schumer
	Harkin	Torricelli
	Hollings	Wellstone
	Inouye	Wyden
	Johnson	

NAYS (53)

Republicans (53 or 96%)		Democrats (0 or 0%)
Abraham	Hutchinson	
Allard	Hutchison	
Ashcroft	Inhofe	
Bennett	Jeffords	
Bond	Kyl	
Brownback	Lott	
Bunning	Lugar	
Burns	Mack	
Campbell	McCain	
Cochran	McConnell	
Collins	Murkowski	
Coverdell	Nickles	
Craig	Roberts	
Crapo	Roth	
DeWine	Santorum	
Domenici	Sessions	
Enzi	Shelby	
Fitzgerald	Smith, Bob (I)	
Frist	Smith, Gordon	
Gorton	Snowe	
Gramm	Stevens	
Grams	Thomas	
Grassley	Thompson	
Gregg	Thurmond	
Hagel	Voinovich	
Hatch	Warner	
Helms		

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

The Daschle (for Kennedy) amendment would apply to State regulated group insurance plans the consumer protection standards that the Republican bill would apply to federally regulated group insurance plans (thereby subjecting them to dual regulation).

The Graham amendment would add provisions on emergency medical care that would have one main distinction from the underlying Republican bill's provisions on emergency medical care. The Republican bill would require all group health plans to allow their participants to go to emergency rooms for treatment without prior authorization under the "prudent layperson" standard. A "prudent layperson" would be defined as an individual who had an average knowledge of health and medicine. Further, a health plan's participants would have to be allowed to go to the nearest emergency room regardless of whether it was within the plan's network of health care providers, and a health plan could not charge higher copayments or other fees for emergency services provided outside of its network of providers. Once an emergency situation was stabilized (meaning that the patient no longer faced a medical emergency situation) a health plan would not be required to pay for additional, poststabilization services that it did not authorize. The main difference of the Graham amendment is that it would require a health plan to pay for any poststabilization services if a health plan could not be reached for instructions on further care within 1 hour after stabilization of a patient and if the care given met the regulatory definition for covered poststabilization care currently used by Medicare and Medicaid for their health maintenance organization (HMO) participants (that definition is "medically necessary, nonemergency services furnished to an enrollee after he or she is stabilized following an emergency medical condition").

Those favoring the amendment contended:

The Graham amendment on emergency medical care is better in three ways than the emergency care provisions in the Republican bill. First, though both alternatives would forbid HMOs from charging more for emergency care from out-of-network providers, the committee report to the Republican bill would undermine its prohibition. Our Republican colleagues have said that the ambiguity created by the committee report was unintentional and that they will offer a clarifying amendment to remove it. Second, though both bills would require coverage of all emergency room treatments to stabilize an emergency, the Republican bill would add some ambiguous language that would undermine this requirement. Our Republican colleagues, again, say that the ambiguity was unintentional so they will offer an amendment to remove it. Third, the alternatives diverge sharply on the issue of poststabilization care. The Graham amendment would make an HMO pay for additional care if it could not be reached for authorization for such care. This requirement makes sense. For instance, if a patient's fever were reduced, but the hospital doctors did not know why it had gone so high in the first place, they might believe that it would be safest to keep him overnight for tests and to monitor his condition. If that patient knew that the costs of such a stay would run into the thousands of dollars and if that patient did not know whether the costs would be covered by his HMO he might refuse the needed treatment. Patients should not be put in that position. The standard for covered care that would be used by the Graham amendment is the same standard now being used by Medicare and Medicaid. Medicare and Medicaid, with 70 million patients, are doing well with that standard, so we do not see why private plans could not enjoy similar success. We believe that the Graham amendment would clearly do better than the Republican bill in ensuring access to emergency care. We therefore strongly support this amendment.

Those opposing the amendment contended:

The differences between the Republican and Democratic approaches on this issue are small. Our colleagues have raised two concerns which we believe are technical (regarding report language and language on appropriate emergency care) which we will happily correct with a clarifying amendment. They have also raised another concern regarding poststabilization care. That concern is substantive. Our colleagues have noted that after a patient is stabilized, if that patient's HMO cannot be reached for authorization for further treatment, the attending physician often has a medical obligation to provide additional care. They have also noted that, under the Republican bill, an HMO would not be required to pay for any such poststabilization care given. In all candor, we believe that our colleagues have identified a real problem. Therefore, it is our intent to offer an amendment that would require an HMO to pay for poststabilization care related to an emergency room admission if it could not be reached within a very short time frame after a patient was stabilized. Our Democratic colleagues, though, seem unable to take "yes" for an answer. They say that they want us to accept the standard for poststabilization care that they have proposed in their amendment. We cannot. They have suggested using the Medicare/Medicaid regulatory language which authorizes any medically necessary care, whether related to the emergency room visit or not. Thus, a man who thought he was having a heart attack could go to the emergency room and find that he only had indigestion, and then, while he was there, decide he might as well have a battery of totally unrelated tests. Under the Graham amendment, the HMO would have to pay. Our colleagues tell us that we should not expect such abuses because Medicare and Medicaid have not reported problems. Of course, these are the same two programs that are infamous for the amount of waste and abuse they allow, that are growing exponentially in cost, and that are largely responsible for the size of the national debt. Further, we know that most Medicare and Medicaid patients are not in HMOs, and we know that HMOs have been quitting the Medicare plan in the last couple of years because they are losing money in it. Further, if our colleagues are really convinced that the only poststabilization care that is given is care that is related to the emergency events, then why would they object to us tightening the definition to say so? An open-ended definition is an invitation to abuse. We therefore must oppose this amendment.